IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.03.2002

Coram :

THE HONOURABLE MR. JUSTICE P. SHANMUGAM

and

THE HONOURABLE MR. JUSTICE P. THANGAVEL

H.C.P. No.1113 of 2001

S. MOHAN .. PETITIONER

Vs.

1.STATE OF TAMIL NADU REP.BY ITS
SECRETARY TO GOVT.,
PUBLIC (SC) DEPARTMENT,
FORT ST.GEORGE,
CHENNAI-600 009.

2.GOVERMENT OF INDIA REP.
BY ITS SECRETARY,
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
NEW DELHI.

3.THE SUPERINTENDENT OF PRISON,
CENTRAL PRISON,
CHENNAI-3. .. RESPONDENTS

PRAYER : Petition under Article 226 of the Constitution of India, praying that in the Circumstances stated therein and in the affidavit filed therewith, the High Court will be pleased to issue a Writ of Habeas Corpus calling for the records leading to the detention of S. Mohan under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974 vide detention order dated 19/04 /01 on the file of the first respondent herein made in G.O. No.SR.I/3 66-5/2001 Public (SC Department) and quash the same as illegal and consequently direct the respondents herein to set the said detenu at liberty from the Central Prison, Chennai.

ORDER : This Habeas Corpus Petition coming on for hearing, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of

! Mr. B. Kumar, Senior Counsel on behalf of Mr. A. Ganesh, counsel for the petitioner

^ Mr. I. Subramaniam, Public Prosecutor on behalf of the first and third respondents and

Mr. Su. Srinivasan, A.C.G.S.C. for the second respondent, the Court passed the following order :-

: O R D E R

P. SHANMUGAM, J.

The Writ Petition is for the issue of a Writ of Habeas Corpus by calling for the records of the first respondent State of Tamil Nadu in G.O. No.SR.I/366-5/2001 Public (SC Department) dated 19.4.2001 issued under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act) and for the release of the detenu.

2. The detention order is passed in exercise of the powers conferred by Section 3(1)(i) of the Act. On the materials placed before the State Government that the petitioner had indulged in smuggling of goods, the above order came to be passed. The facts necessary for the disposal of the case are stated hereunder.

3. The petitioner started a concern in the name and style of M/s. Majestic International some time in October, 2000. A Current Account was opened in the name of the concern on 20.10.2000 with the Bank of Baroda, S.I.E.T. Branch, Chennai-18. Petitioner took lease of the premises at Door No.1, P.P. Amman Koil III Street, Tondiar Nagar, Chennai-81 on 10.7.2000. He obtained a Certificate of Importer and Exporter Code from the Ministry of Commerce dated 2.11.2000 preceded by his application dated 28.10.2000. Petitioner placed an order for import of 360 numbers of table fans sometime in January, 2001 and the goods arrived by the Vessel "TIGER METRO 865-N " from Singapore. Petitioner filed a bill of entry through his clearing agent M/s. Lotus International Services dated 23.1.2001 as per the invoice issued by M/s. Sea Field Impex, Singapore in the name of M/s. Majestic International. The quantity of goods indicated was 360 table fans in 12 wooden cases with a unit price of 9.81 Singapore Dollars and a total price of 353 1.60 Singapore Dollars. The said bill of entry was assessed by the Customs and an amount of Rs.64,968/- was paid as duty on 23.1.2001. When the above mentioned wooden cases were inspected by the officers of the Directorate of Revenue Intelligence on 2.2.2001, the wooden cases were found to contain 90 table fans as against the declared quantity of 360 table fans, besides other electronic items like Cell Phones, V.C.D. Players, Air Conditioner Compressors and Tapes, having a total C.I.F. value of Rs.90,74,760/- and an approximate market value of rupees 1.6 crores. They were seized under a magazar. Summons dated 3.2.2001, 4.2.2001 and 5.2.2001 were issued by the D.R.I., Chennai to Thiru T.S.

Kamalakannan, partner of M/s. Lotus International Services, the Customs House Agent for the subject consignment, who gave a voluntary statement dated 4.2.2001 that the petitioner was introduced to him by one Thiru Vinodh Kumar and that the petitioner had earlier requested for the clearance of Mini Car Fans from Singapore and that he handled the goods in question by filing the bill of entry. Petitioner did not pay heed to the summons issued to him and they were returned undelivered by the postal authorities. Petitioner thereafter appeared before the D.R.I., Chennai on 14.3.2001 on his own and gave a voluntary statement stating that he had opened a current account and obtained a P.A. Number from the Income Tax Department and the Importer Exporter Code from the Commerce Department and also that he had imported the goods and that some persons, whose names and details he did not remember, informed him that certain amount will be paid to him whenever goods were imported in the name of his company. He has also referred to the goods imported by Krishnakumar in the name of M/s. Blue Wave Impex. The electronic goods and table fans were seized on 2.2 .2001 for having been imported in contravention of the provisions of Section 11 of the Customs Act, 1962 readwith Section 3(3) of the Foreign Trade (Development and Regulation) Act, 1982 by giving a false declaration with a deliberate intention to evade payment of customs duty thereby and since the items were liable for confiscation under Sections 111(d), 111(i) and 111 (m) of the Customs Act, 1962. Petitioner was arrested by the officers of the D.R.I., Chennai on 14.3.2001 and produced before the Additional Chief Metropolitan Magistrate (E.O. II), Egmore, Chennai, who remanded him to judicial custody till 29.3.2 001. At the time of remand, petitioner had complained that he was beaten up by the Intelligence Officers. He had filed a bail application in the Court of the Additional Metropolitan Magistrate on 15.3.2001 , inter alia, contending that the statement was obtained from him by threat, coercion and undue influence and he retracted from his statement as involuntary. The D.R.I., Chennai filed a counter dated 21.3.2 001 denying the allegations made by the petitioner in the bail application. The Government, after taking into consideration the allegations contained in the bail application and after having been satisfied that the said allegations are baseless, after-thought and devoid of merits and rejecting the same, passed an order of detention after having been satisfied that the petitioner had indulged in smuggling goods.

4. According to the petitioner, he was ill treated by the officials of the D.R.I. and statement was obtained from him forcibly as per the officers' direction. He further says that he had complained before the learned Magistrate about it and that he also noted down the same. When he was taken to the Sub Jail, when he was asked to show the identification marks on his body, he had removed his shirt to show the identification marks to the Sub Jailor and he saw the injuries on his back, buttocks and the lower back of his thighs. The Sub Jailer had noted down the injuries in the Register and got the signatures of the D.R.I. officers to admit him. According to him, the Jail Doctor also noted down the injuries and gave first aid. His brother filed a bail application before the C.M.M. (E.O. II), Egmore under Section 54 of the

Code of Criminal Procedure and thereafter, he was referred to the Government General Hospital, Chennai for treatment. He was admitted in the Government Royapettah Hospital as an in-patient and was taking treatment there for ten days and in the meanwhile, the detention order came to be passed. The above writ petition is filed against the said order of detention dated 19.4.2001.

5. Though several grounds were raised in the affidavit against the order of detention, the main grounds raised by the petitioner's counsel for the purpose of consideration in this case are as follows :

(a) Some of the documents have been given only in English without there being a translation in Tamil. Since the petitioner does not know English, there cannot be a proper communication of grounds.

(b) The statement was obtained from the petitioner by force as evidenced by the external injuries on the body of the petitioner. The detaining authority has failed to apply his mind on this vital aspect. There is non-application of mind in that the statement was taken into account without reference to the force said to have been used against the petitioner.

(c) The sponsoring authority has suppressed certain vital facts and material in reference to the injuries while he was being admitted in the Sub Jail.

(d) Petitioner had sent a retraction letter on 29.3.2001 to the C.M.M. (E.O. II), Egmore detailing about the ill treatment and stating that his statement is not voluntary. Petitioner's counsel argued for bail before the Additional C.M.M. (E.O. II), Egmore placing reliance on the above said document. However, the retraction and the injury report were not placed before the detaining authority before passing the detention order.

6. Learned Public Prosecutor submitted the following in reference to the specific grounds argued before us :

(a) Copies of all the materials placed before the detaining authority had been furnished to the detenu. Translation of all the documents except those relating to customs clearance, opening of bank account, obtaining of import export code from the office of the Joint Director General of Foreign Trade, which the detenu has dealt with as such, has been furnished. There is a proper comunication of the grounds and there has not been any failure in this regard.

(b) The complaint made by the petitioenr was mentioned in the remand order. This was placed before the detaining authority. The learned Magistrate did not give any direction to any authority in this regard.

(c) The petitioner's allegation before the Additional Chief Metropolitan Magistrate in his bail application that the statement was obtained by threat, coercion and undue influence and that he had retracted the statement as involuntary was denied in the counter filed by the D.R.I., Chennai. The Government has taken into consideration the allegations contained in the bail application and found that they are baseless, after-thought and devoid of merit.

(d) In the alternative, assuming that the statement should not be relied upon, there is sufficient ground to justify the order of detention under Section 5-A of the Act.

7. Learned senior counsel Mr. B. Kumar, while not opposing the legal submission raised on Section 5-A, submitted that there are no two grounds available in this case to invoke Section 5-A.

8. We have heard the counsel elaborately, gone through the records and considered the matter carefully.

9. Non-furnishing of translation in Tamil :
At the outset, it has to be stated that the petitioner has made a vague complaint in reference to this main ground of attack. In the fag end of his affidavit, what he says is as follows :

"6(x). Petitioner further submits that some of the documents have been given only in English without there being a translation in Tamil. Since the detenu does not know English, there cannot be said to be proper communication of grounds within the meaning of the said Article. This factor by itself vitiates the continued detention of the detenu."

The petitioner had not set out the documents which have not been translated. In the counter, it is stated that Tamil translation of all the documents excepting the customs clearance, opening of bank account, obtaining of import export code from the Office of the Director General of Foreign Trade, which the detenu has dealt with as such, have been furnished. The detenu is aged 35 years and he has admittedly studied upto X Standard. Admittedly, he had opened a current account in the Bank of Baroda, S.I.E.T. Branch and thereafter, applied for P.A. Number from the Income Tax Department and also obtained a Certificate of Importer Exporter Code. He had also taken a premises on lease at Door No.1, P.P. Amman Koil III Street, Tondiar Nagar, Chennai-81 on a monthly rent of Rs.1,500/- for eleven months. The invoice from the Singapore company shows that Majestic International had placed an order for 360 table fans, and on arrival of the consignment by the ship, the bill of entry was filed dated 23.1.2001 by Lotus International Services for the importer Majestic International describing the materials, i.e. 360 table fans. A customs duty of Rs.64,968/- was paid by Majestic International on 23.1.2001. From the magazar dated 2.2.2001, it is seen that the 12 backages contained electronic items valued at Rs.90,94,760/-. Though the bill of entry, the invoice raised by the Singapore company and the

receipt of customs duty are not translated in Tamil, we find that these documents are the detenu's own documents and handled by the detenu himself and through his agent. Similarly, the petitioner's application for opening of a current account with the Bank of Baroda and his application in the form of declaration before the Ministry of Commerce were public documents, for which no translation is given. The detenu has acted on the basis of the bank account, the import export code number, the invoice order and the bill of entry. Petitioner has signed the documents like the application, declaration form and the certificate in English and therefore, we are unable to agree with the contention of the learned senior counsel for the petitioner that in the absence of true English translation of these documents, petitioner could not make a proper representation. It is very clear that the detenu had a good working knowledge of English, even though he has studied upto X Standard.

10. In this context, some of the decisions cited on either side which are relevant can be referred to. In QUBEC DARIZO VS. UNION OF INDIA [1990 S.C.C. (CRL.) 227], , while explaining the word "communicate" found in Article 22(5) of the Constitution of India, their lordships of the Supreme Court held that what is considered necessary is a working knowledge of the language enabling the detenu to understand the grounds or full explanation or translation thereof in the language understood by the detenu. It was held that it would be open for the court to consider the facts and circumstances of a case to reasonably ascertain whether the detenu is feigning ignorance of the language or he has such working knowledge as to understand the grounds of detention and the contents of the documents furnished. It would involve a subjective determination. In ABDUL SATTAR VS. UNION OF INDIA [1990 S.C.C. (CRL.) 242], it was held that copies of the documents (bail application filed by the detenu himself) not relied upon, but only incidentally referred to in the grounds would not violate Article 22(5) and vitiate the detention. In this case, though it cannot be stated that the invoice, checklist, declaration form for filing a bill of entry and his application for opening the bank account are not translated. We find that all these documents have emanated from the detenu or under his authority and hence are his own documents. In PRAKASH CHANDRA VS. COMMISSIONER AND SECRETARY, GOVERNMENT OF KERALA (A.I.R. 198 6 S.C. 687), it was held that the Constitution requires that the ground must be communicated. Therefore, it must follow as an imperative that the grounds must be communicated in a language understood by the person concerned so that he can make effective representation. Their lordships further held that there is no rule of law that common sense should be put in cold storage while considering constitutional provisions for safeguards against misuse of powers by authorities, though these constitutional provisions should be strictly construed. On these premises, their lordships, considering in that case that the petitioner was constantly accompanied by persons who knew English very well and that he had been communicating to the authorities by way of mercy petitions, not knowing the contents were all disbelieved and it was held that the court is not the place where one can tell all tales. As rightly pointed out, in this case, the petitioner had been making applications and declarations on his own which were signed by

him in English and he is dealing in import of materials, admittedly placing orders with exporters. Therefore, it follows that the petitioner was merely feigning ignorance of English even in reference to the few of his own documents. In NAINMAL PERTAP MAL SHAH VS. UNION OF INDIA (A.I.R. 1980 S.C. 2129), the Supreme Court was dealing with a case where the complaint of the detenu was that he did not know and did not understand the language in which the detention order was passed and stated that no translated script thereof was supplied to him. In that context, it was held in that case that the suggestion of the respondent that the detenu had signed number of documents in English and hence it must be presumed that he was fully conversant in English was held to be based on pure speculation when the detenu has expressly stated that he did not know English. Here, it is not the case that the grounds of detention running to 11 pages and the list of documents containing 283 pages were not translated and given to the detenu in the language known to him. Even according to him, only some of the documents were not translated. We find that the documents that were not translated were only the invoice raised by the foreign company in the name of the detenu on his order and the application to open a current account in the name of the detenu's concern and the declaration and application made for obtaining the I.E. Code were the few documents which were not translated. All other documents were duly translated and supplied to the detenu. Even here, the reference in the grounds of detention to these documents were also translated to the detenu. Therefore, we do not find any substance in this point.

11. Non-application of mind :
The detenu had placed orders for supply of 360 number of table fans with a Singapore company for the alleged cost of 3531.60 Singapore Dollars. The containers arrived by the Vessel on 19.1.2001. On specific intelligence information, the consignment was seized by the officials of the Directorate of Revenue Intelligence and they found that the bill of entry dated 23.1.2001 indicated that it was filed by M/s. Lotus International Services, Chennai on behalf of M/s. Majestic International. The invoice from the Singapore concern indicated the quantity of 360 table fans in 12 wooden cases with a unit price of 9.81 Singapore Dollars, the total price of which comes to 3,531.60 Singapore Dollars. The said bill of entry was already assessed by the Customs and a sum of Rs.64,968/- was paid as duty on 23.1.2001. However, finding that the import was contrary to the declaration and to evade customs duty, in the presence of the witnesses, a magazar was prepared and on inspection, it was found that the 12 wooden cases contained 90 table fans against the declared quantity of 360 table fans and the remaining were electronic goods having a total C.I.F. value of Rs.90,94,760/- and a market value of Rs.1.6 Crores. Inspite of a number of summons issued to the detenu, he did not appear. A statement was obtained from the detenu's Customs House Agent T.S. Kamalakannan, wherein he inter alia stated that the detenu was introduced to him by one Thiru Vinodh Kumar and that the detenu requested him to handle a clearance of his import consignment. It is after all this, the detenu appeared before the D.R.I. and gave a statement dated 14.3.2001. The said statement, according to

the learned Public Prosecutor, is exculpatory and there was no confession in the strict sense of the term. What he stated is borne out of records. He speaks of the opening of bank account, applying for permanent income tax number and obtaining the export and import code. He also speaks of taking of the room on a monthly rent for his company. He further says that he had obtained a consignment earlier cleared through Kamalakannan. This is the second import consignment. He answers in the negative to the question whether he has made the payment for the consignment imported in December and how the second consignment was imported in the company's name and who is the proprietor/incharge of the Singapore company. According to him, no payment has been made. He says that he was not present at the time of examination of the items by the Customs authorities and he does not have the money to pay the customs duty and he does not know for whom the goods were cleared, though the goods were imported in his company's name. He implicates Kamalakannan that is only through him that his company's name was used. Thus, if we go through this alleged statement dated 14.3.2001, it could be seen that it is mostly in the form of questions and answers. There is absolutely nothing to find confession of any guilt. Therefore, strictly speaking, the question of retraction of the alleged confession does not arise at all in this case. In KANDA PADAYACHI VS. STATE OF TAMIL NADU [1971 (2) S.C.C. 641], the Supreme Court held that a confession has to be direct acknowledgment of the guilt of the offence in question and such as would be sufficient by itself for conviction. If it only falls short of the plenary acknowledgment of guilt, it will not be confession, even though the statement is of some incriminating fact which, taken along with other evidence, would prove his guilt. Such a statement is admission, but not confession. An admission of fact however incriminating but not by itself establishing the guilt of the maker of such admission would not amount to confession within the meaning of Sections 24 to 26 of the Indian Evidence Act. Applyingf this principle, it has to be held that the alleged statement made before the D.R.I. in this case would not amount to confession.

12. In the remand application, petitioner's identification particulars are given. The Additional Chief Metropolitan Magistrate (E.O.II), Egmore, in his remand order has stated as follows :

"Accused produced. Accused represents he was beaten up by the Intelligence officer. Prima facie is made out. Remand till 29.3.2001."

It is thereafter at the time when he was sent to the Sub Jail that in order to show the identification mark on his body, he had removed his shirt and the injuries were seen on his back by the Sub Jailor and it was noted in the Admission Register and Gate Register. Insofar as the identification particulars are concerned, it is already found in the remand application and normally, it is to be noted visibly. He had a scar on the right side of the forehead and a mole on the left side of the chin. It is not his case that he was asked to remove the shirt to show the identification marks. Therefore, the averment appears to be made for the purpose of the case. Further, in the affidavit, he has stated, "I was ill-treated by the officials of the D.R.I. and the statement was obtained forcibly." He had not given the manner and method of his ill treatment in the initial stage of the affidavit. Of course, in the later

parts of his affidavit, he has stated that the statement was obtained by violence. On 15.3.2001 itself, the detenu filed his application for bail under Sections 436 and 437 of the Code of Criminal Procedure, adding to the printed bail application that he had complained that the statement was obtained from him by threat and coercion and that it was not a voluntary one, for which a counter affidavit was filed by the respondents in Crl. M.P. No.729 of 2 001 in R.R. No.11 of 2001 denying any such ill treatment. Thus, it could be seen that the relevant materials namely the remand order, the bail application of the detenu containing the complaint of ill treatment and the denial of the respondents were placed before the detaining authority and they were taken into account before the detention order came to be passed. In the grounds of detention, in Ground Nos.17 and 20, it is stated that at the time of remand, he had complained that he was beaten up by the Intelligence officers and that he had filed a bail application inter alia contending that the statement was obtained from him by threat, coercion and undue influence and that he had retracted the statement and that the D.R.I., Chennai had filed a counter denying the allegations and the Government had taken into consideration the allegations contained in the bail application and the materials placed before the court and was satisfied that the allegations are baseless, after-thought and devoid of any merit and hence rejected the same.

13. The main submission of the learned senior counsel for the petitioner is that there is failure on the part of the sponsoring authority to place before the detaining authority the injuries said to have been noted by the jail authorities when the detenu was sent to the jail on 15.3.2001. Thereafter, the brother of S. Mohan filed an application before the Magistrate under Section 54 Cr.P.C. to refer him to the Government Hospital for treatment and immediately he was admitted in the hospital from 16.3.2001 onwards. The medical certificate of the Doctor says that he had suffered certain contusions and that he was treated for the same. Petitioner has not stated specifically even in the affidavit filed in support of the writ petition as to how he was ill treated by the officials of the D.R.I. and that the statement was forcibly obtained from him. He did not say as to how the injuries had occurred. As rightly suggested by the learned Public Prosecutor, there is no record as to the age of the injuries and that the injuries occurred only when he came to the D.R.I. office on 14.3.200 1. Therefore, the relevant materials available in reference to the detenu namely the remand order, bail application and the counter, were all taken into account before passing the detention order. As stated earlier, petitioner is said to have been admitted in the hospital immediately thereafter and remanded there for ten days for this alleged injury.

14. Some of the decisions referred to in this context can be summarised here. In GURDEV SINGH VS. UNION OF INDIA [2001 (9) J.T. (S.C.) 3 74], it was held that the subjective satisfaction arrived at by the detaining authority is based on consideration of all relevant materials placed before it by the sponsoring authority. It is not the case of the appellant in that case that the sponsoring authority did not

place before the detaining authority any material in its possession which is relevant and material for the purpose and such material, if considered by the detaining authority, might have resulted in taking a different view in the matter. Whether the detention order suffers from non-application of mind by the detaining authority is not a matter to be examined according to any straight-jacket formula or set principles which depends upon the facts and circumstances of the case. The Act does not lay down any set parameters for arriving at subjective satisfaction. Keeping in view the purpose for which the enactment is made and intended to achieve, the Parliament, in its wisdom, has not laid down any set standards for the detaining authority to decide whether an order of detention should be passed against a person.

15. In SANJAY KUMAR AGARWAL VS. UNION OF INDIA [1990 (3) S.C.C. 309], the Supreme Court, repelling the contention of non-application of mind by a detaining authority, held that the detaining authority in that case has considered the allegations that the detenu was manhandled etc. At any rate, the detaining authority has clearly noted that the detenu has retracted from the alleged statement and therefore, it cannot be said that there is non-application of mind in this regard. In our case also, the detaining authority was aware of the retraction and the allegation of coercion and compulsion to get the statement.

16. Learned senior counsel for the petitioner relied on the judgment in SEVANTHILAL VS. STATE OF MAHARASHTRA (A.I.R. 1979 S.C. 795), K.T.M.S. MOHAMMED VS. UNION OF INDIA (A.I.R. 1992 S.C. 1831) and D.K. BASU VS. STATE OF WEST BENGAL [1997 (1) S.C.C. 416] in support of his contention that the statement obtained by use of force cannot be relied upon and that the arrestee should have been examined at the time of his arrest of his injuries. We are not concerned with the prosecution and the criminal trial under the Act. The only concern of this court is whether the relevant materials were placed before the detaining authority to come to his subjective satisfaction. The alleged fact that he had given the statement under force was made by the petitioner in his bail application and it was countered and was also taken into account by the detaining authority. Even when the detenu had the first opportunity to explain the injury, he did not make any such complaint at all. On the contrary, the Magistrate, on enquiries, found that there is no complaint of any physical violence. Therefore, the decisions cited by the learned senior counsel for the petitioner have no avail in this case.

17. Section 5-A :
Learned Public Prosecutor alternatively argued that assuming for the sake of argument that the confession statement was obtained by coercion is true and that the injuries relied upon were not placed before the sponsoring authority, there are other material grounds to make the detention order valid, namely the attempt to import 336 pedestal fans in 28 wooden cases for 6652.80 Singapore Dollars, which is equivalent to Rs.1,80,623/-, whereas on inspection, it was found to contain electronic

goods valued at about Rs.2½ crores and its market value was assessed at about Rs.4½ crores and that the address of the detenu's concern was found to be a small locked room and that the I.E. Code was obtained and bank account was opened recently for the purpose of this import and that T.S. Kamalakannan, partne r of M/s. Lotus International Service, C.H.A. appeared before the D.R.I., Chennai and gave voluntary statement and that the detenu had brought all these materials and after tendering the declaration forms for filing bill of entry on 22.1.2001 and obtaining checklist, the detenu did not turn up and that the boxes were opened in the presence of independent witnesses and most of the goods were found to be undeclared electronic items and that the detenu did not respond to the three summons issued and that the detenu appeared after having knowledge of the seizure of the goods on 3.2.2001 only on 14.3.2001 to give the statement. Thus, according to the Public Prosecutor, de hors the alleged statement, there are overwhelming documentary and other evidence to establish and support the subjective satisfaction arrived at by the detaining authority in order to pass an order under Section 3 of the Act.

18. In support of this contention, reliance was placed on the judgment of the Supreme Court in MRS. U. VIJAYALAKSHMI VS. STATE OF TAMIL NADU (A.I.R. 1994 S.C. 165), wherein the Supreme Court held that assuming without deciding that a particular contention is well founded, Section 5-A of the Act takes care of it. Even if they were to hold that a particular ground is extraneous or irrelevant, that would not affect the validity of the detention order, as Section 5-A was introduced precisely to take care of such a situation. That was a case of an order passed under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Boot Leggers etc. Act, 1982. Two main grounds of detention in that case were that the felling of sandalwood trees is causing widespread danger to ecological system and loss of revenue to the Government and secondly that the huge money falling into the hands of tribals makes them susceptible to drinking and gambling and thereby converting the poor and innocent tribals into anti-socials. The Supreme Court repelled the contention that the order is vitiated since the second ground is too remote to think that the tribals resort to drinking, gambling etc. In AHMED NASSER VS. STATE OF TAMIL NADU [19 99 (8) J.T. 252], the Supreme Court held that in the light of the Preamble as also the objects and reasons of COFEPOSA, justiciability of acts of every statutory functionary performing statutory obligations under the Act has to be scrutinised and decided on the basis of the Preamble and objects and reasons of the COFEPOSA. If there be two possible interpretations, then the one that subserves the object of the statute should be accepted. In that case, it was held that even in the absence of bail application, the conclusion of the detaining authority that there is a likelihood of his being released on bail cannot be said to be based on no relevant material. Their lordships further held that non-placement of two material documents before the detaining authority, which were relevant and were likely to affect the satisfaction, will not vitiate the detention order.

19. Per contra, learned senior counsel for the petitioner submitted that there was only one ground in the detention order namely smuggling of goods and all others were only materials and not grounds of detention. According to him, Section 5-A can be invoked only when there are two grounds in the detention order. In support of his contention that omission to consider relevant material by the detaining authority will vitiate the order on the ground of non-application of mind, learned senior counsel referred to the judgment of the Supreme Court in AYYA ALIAS AYUB VS. STATE OF U.P. (A.I.R. 1989 S.C. 364), wherein their lordships held that if a piece of evidence which might reasonably have affected the decision whether or not to pass an order of detention is excluded from consideration, there would be a failure of application of mind which, in turn, will vitiate the detention. In this case, it cannot be stated that the detaining authority was not aware of the allegation that the detenu was ill treated and that the statement was obtained by coercion and force. Both the applications as well as the counter were placed before the detaining authority. In ATTORNEY GENERAL OF INDIA VS. AMRITLAL PRAJIVANDAS (A.I.R. 1994 S.C. 2179), the Constitution Bench of the Supreme Court was dealing with the validity of the COFEPOSA. In the course of the judgment, their lordships, while dealing with Section 5-A, have held that single acts of wagon-breaking, theft of signal material, theft of telegraphic copper wires in huge quantity and removal of railway fish plates is sufficient. COFEPOSA is designed to prevent these acts. They are all either acts of smuggling or foreign exchange manipulation. These acts are indulged in by persons who act in concert with other persons and quite often, such activity has international ratifications. These acts are preceded by a good amount of planning and organisation. It is not necessary that there should be multiplicity of grounds for making or sustaining an order of detention. Where the order of detention made is based on more than one ground, the Section creates a legal fiction namely that it must be deemed that there are as many orders of detention as there are grounds, which means that each of such orders

is an independent order. Section 3 of the Act, which empowers to make an order of detention, provides for the communication to the person detained the grounds on which the order has been made.

20. In PRAKASH CHANDRA VS. COMMISSIONER AND SECRETARY, GOVERNMENT OF KERALA (A.I.R. 1986 S.C. 687), the very question came up for consideration and their lordships held as follows :

"The grounds under Article 22(5) of the Constitution do not mean mere factual inferences, but mean factual inferences plus factual material which led to such factual inferences."

.....

"The concept of 'grounds' used in the context of detention in Article 22(5) of the Constitution and in Sub-section (3) of Section 3 of the COFEPOSA, therefore, has to receive an interpretation which will keep it meaningfully in tune with the contemporary notion, while the expression 'grounds' for that matter includes not only conclusions of

fact, but all the 'basic facts' on which those conclusions were founded, they are different from subsidiary facts or further particulars or basic facts."

The argument in that case that retraction should have been considered by the detaining authority and that the court does not know had that been taken into consideration, what conclusions the detaining authority would have arrived at was not accepted. It was held that the court is not concerned with the sufficiency of the grounds and the court is concerned whether there are relevant materials on which a reason for conviction could have been entertained by the detaining authority. Whether other grounds should have been taken into consideration is not relevant at the stage of passing of the detention order. If that is the position, then, in view of Section 5-A of the Act, there was sufficient material to sustain this ground of detention. In STATE OF GUJARAT VS. CHAMAN LAL (A.I.R. 1980 S.C. 1480), their lordships of the Supreme Court held that it is manifest that whenever the allegations of smuggling are made against a person who is sought to be detained by way of preventing further smuggling, there is bound to be one act or several acts with the common object of smuggling goods, which is sought to be prevented by the Act. It would, therefore, not be correct to say that the object of the Act constitutes the ground for detention. If this is so, in no case, there could be any other ground for detention, except the one which relates to smuggling. What the Act provides is that where there are a number of grounds of detention covering various activities of the detenu spreading over a period or periods, each activity is a separate ground by itself and if one of the grounds is irrelevant, vague or unspecific, then that will not vitiate the order of detention. While referring to the background of Section 5-A, their lordships held that the reason for enacting Section 5 -A was the fact that several High Courts took the view that where several grounds are mentioned in an order of detention and one of them is found to be either vague or irrelevant, then the entire order is vitiated because it cannot be predicated to what extent the subjective satisfaction of the authority could have been influenced by the vague or irrelevant ground. It was to displace the basis of these decisions that the Parliament enacted Section 5-A in order to make it clear that even if one of the grounds is irrelevant and the other grounds are clear and specific, that by itself would not vitiate the order of detention. In SOWKATH ALI VS. UNION OF INDIA [2000 S.C.C. (Crl.) 130 4], strongly relied on by the counsel for the petitioner, their lordships held on the fact of that case that Section 5 has no application. In SATYANARAYANA SUBUDHI VS. UNION OF INDIA (A.I.R. 1991 S.C. 1375), it was held that there were no two grounds, but only one ground and that the non-placement of retraction of the confession statement by the detenu before the detaining authority makes the detention invalid.

21. Therefore, the order of detention is based on several grounds even though the act alleged against the detenu is to prevent him from smuggling goods etc. The facts that the detenu had placed orders to a foreign country for import of pedestal fans, but actually imported electronic goods of a large magnitude and that his clearing agent has

admitted these facts and that it was found out in the inspection and also that the detenu has also confessed of the said act are the grounds in support of the detention. Therefore, it cannot be stated that the order of detention was made only on one ground. As a matter of fact, Sub-section (3) of Section 3 says, "In pursuance to the grounds on which the order of detention has been made." They contemplate several grounds for the detention order. When Section 5-A speaks of two or more grounds, it says that a detention order is deemed to have been made separately on each of such grounds. Therefore, the argument of the learned Public Prosecutor has much force. Hence, we find assuming for the sake of argument that the non-placement of the alleged injury record in the jail is true, it cannot be said to be fatal in this case.

22. For all the above reasons, we do not find any ground to interfere with the order of detention passed against the petitioner in this case. The writ petition fails and it is accordingly dismissed. No costs.

Index : Yes (P.S.M.J.) (P.T.J.)
Internet : Yes 04..03..2002
ab

To

1. The Secretary to Government,
Public (SC) Department,
Fort Saint George,
Chennai-9.

2. The Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
New Delhi.

3. The Superintendent,
Central Prison,
Chennai.

(In duplicate for communication to Detenu)

4. The Public Prosecutor,
High Court,
Chennai-104.

P. SHANMUGAM, J.
and
P. THANGAVEL, J.

SUO MOTU H.C.P. No.1113 of 2001

PRE-DELIVERY ORDER
DELIVERED ON 4/3/2002